

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: MARCH 27, 2013

SUBJECT: APPLICATION OF BRIAN WATER CORPORATION REQUESTING A
TEMPORARY SURCHARGE IN ITS RATES AND CHARGES FOR
WATER SERVICE, CASE NO. BRN-W-12-02

On December 7, 2012, Brian Water Corporation (“Brian Water” or “Company”) filed an Application (Letter) requesting authority to institute a temporary surcharge. The Company proposes an effective date of January 2013. On December 17, 2012, the Commission received a copy of the Customer Notice.

On January 7, 2013, the Commission moved forward on Brian Water’s Application by issuing a Notice of Application and suspending the Company’s Application for a period of 5 months plus 30 days to allow Staff the opportunity to audit and analyze the Company’s request. *See Order No. 32711.*

TRANSFER OF OWNERSHIP

On February 7, 2013, the Commission received a copy of a transfer agreement and quit claim deed conveying ownership of the Company from the grantor, Mr. Tony Bowar, to the Brian Subdivision Water Users Association (“BSWUA”). On March 26, 2013, the Commission received a letter from Richard Juengling, Registered Agent for BSWUA, acknowledging the transfer of ownership and asserting that the BSWUA “is a not-for-profit corporation established solely for the purpose of operating the water system.” BSWUA states that the “homeowners in the subdivision came together as an organization to find solutions to the water contamination issue” presented some time ago by IDEQ to Mr. Bowar. BSWUA believed that “the only way

for us to move forward was to acquire the system.” BSWUA requests the Commission cancel Brian Water’s existing CPCN.

STAFF RECOMMENDATION

Staff evaluated the transfer agreement and related documents. Staff also spoke with Mr. Juengling regarding the purchase and verified that full legal and operational control of the water system has been assumed by BSWUA. BSWUA is a not-for-profit corporation registered with the Idaho Secretary of State and organized solely for the delivery of water service to the homeowners “at cost.” Thus, pursuant to *Idaho Code* § 61-104, Staff believes that the BSWUA does not qualify as a public utility subject to the Commission’s jurisdiction. Staff recommends that the Commission terminate Brian Water’s pending Application and cancel the Company’s existing CPCN.

COMMISSION DECISION

1. Does the Commission wish to terminate Brian Water’s Application seeking authority to increase its rates for water service?
2. Does the Commission wish to cancel the Brian Water’s CPCN?



Neil Price
Deputy Attorney General

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